

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELY SAU CHAPAS-AGUILERA,
a/k/a Elisau Chapas-Aguilar,

Defendant.

No. CR 07-0763 WHA

PLEA AGREEMENT

I, Ely Sau Chapas-Aguilera, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to the captioned Indictment charging me with one count of illegal entry into the United States following deportation, in violation of 8 U.S.C. § 1326. I agree that the elements of the offense are as follows: (1) the defendant was deported from the United States; (2) after deportation, the defendant knowingly entered and voluntarily remained in the United States; (3) the defendant was found in the United States without having obtained the

PLEA AGREEMENT; CR 07-0763 WHA

consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States; and (4) the defendant was an alien at the time defendant entered and was found in the United States. I agree that the maximum penalties are as follows:

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|----|---------------------------------|-----------|
| a. | Maximum prison sentence | 20 years |
| b. | Maximum fine | \$250,000 |
| c. | Maximum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | None |
| f. | Deportation | |

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true: On or about April 6, 2004, I was convicted of a felony drug trafficking offense in violation of California Health and Safety Code § 11351. I am a citizen of Honduras and am not, nor have I ever been, a citizen of the United States. On or about February 14, 2007, March 9, 2005, July 9, 2004, September 10, 2003, February 26, 2003, and February 6, 2002, I was deported from the United States to Honduras. Subsequent to February 14, 2007, I knowingly and voluntarily reentered the United States and then knowingly remained in the United States. On or about November 19, 2007, I was found in the United States. I have never applied for or received the consent of the Attorney General, the Secretary of the Department of Homeland Security or any representatives of that department.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence. I also agree to waive venue, if necessary, based on the charges filed in this case.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,

1 including any orders relating to forfeiture and/or restitution.

2 5. I agree not to file any collateral attack on my conviction or sentence, including a
3 petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any
4 time in the future after I am sentenced, except for a claim that my constitutional right to the
5 effective assistance of counsel was violated.

6 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
7 entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the
8 government may withdraw from this Agreement if the Court does not accept the agreed upon
9 sentence set out below. I agree that if the Court does not accept the agreed upon sentence set out
10 below, the statute of limitations shall be tolled from the date I signed the plea agreement until the
11 date the Court does not accept the plea agreement.

12 7. I agree that my sentence should be calculated pursuant to the Sentencing
13 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
14 those Guidelines and take them into account when sentencing, together with the factors set forth
15 in 18 U.S.C. § 3553(a). I also agree that the Sentencing Guidelines range will be calculated as
16 follows and that I will not ask for any other adjustment to or reduction in the offense level or for
17 a downward departure from the Guidelines range:

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|----|----|---|----|
| 18 | a. | Base Offense Level, U.S.S.G. § 2L1.2(a): | 8 |
| 19 | b. | Specific offense characteristics:
(U.S.S.G. § 2L1.2(b)(1)(B)) | 12 |
| 20 | c. | Early disposition program:
(U.S.S.G. § 5K3.1) | -4 |
| 21 | d. | Acceptance of responsibility:
(If I meet the requirements of U.S.S.G. § 3E1.1,
I may be entitled to a three-level reduction for
acceptance of responsibility, provided that I
forthrightly admit my guilt, cooperate with the
Court and the Probation Office in any presentence
investigation ordered by the Court, and continue
to manifest an acceptance of responsibility through
and including the time of sentencing.) | -3 |
| 22 | | | |
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| 27 | e. | Adjusted offense level | 13 |

28 The parties have reached no agreement regarding the applicable criminal history category. The

1 parties agree that the Court will order United States probation to prepare a criminal
2 history report.

3 8. I agree that a reasonable and appropriate disposition of this case is as follows:

- 4 a. a sentence of imprisonment at the low end of the Guidelines range for
5 adjusted offense level 13 and the applicable criminal history category as
6 determined by the Court;
7 b. a mandatory special assessment of \$100; and
8 c. three years of supervised release with conditions of supervised release to
9 be established by the Court, with one condition being that I may not
10 reenter the United States illegally during my term of supervised release.

11 9. I agree not to commit or attempt to commit any crimes before sentence is imposed
12 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
13 release (if any); not to intentionally provide false information to the Court, the Probation Office,
14 Pretrial Services, or the government; and not to fail to comply with any of the other promises I
15 have made in this Agreement. I agree that, if I fail to comply with any promises I have made in
16 this Agreement, then the government will be released from all of its promises in this Agreement,
17 including those set forth in paragraphs 12 through 14 below, but I will not be released from my
18 guilty plea.

19 10. I agree that this Agreement contains all of the promises and agreements between
20 the government and me, and I will not claim otherwise in the future.

21 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
22 District of California only, and does not bind any other federal, state, or local agency.

23 The Government's Promises

24 12. The government agrees to move to dismiss any open charges pending against the
25 defendant in the captioned Indictment at the time of sentencing.

26 13. The government agrees not to file any additional charges against the defendant
27 that could be filed as a result of the investigation that led to the captioned Indictment.

28 14. The government agrees that the reasonable and appropriate sentence in this case

1 should be as set forth in paragraph 8 above, unless the defendant violates the Agreement as set
2 forth in paragraphs 8 through 9 above or fails to accept responsibility.

3 The Defendant's Affirmations

4 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
5 Agreement with my attorney, and that she has provided me with all the legal advice that I
6 requested.

7 16. I confirm that while I considered signing this Agreement, and at the time I signed
8 it, I was not under the influence of any alcohol, drug, or medicine.

9 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
10 have been brought against me, any possible defenses, and the benefits and possible detriments of
11 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
12 one coerced or threatened me to enter into this Agreement.

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1 18. I confirm that I read this entire plea agreement with the assistance of an interpreter
2 and in the presence of my attorney.
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4 Dated: _____

ELY SAU CHAPAS-AGUILERA
Defendant

6 JOSEPH P. RUSSONIELLO
7 United States Attorney

8 Dated: _____

ALBERT B. SAMBAT
Special Assistant United States Attorney

10 I have fully explained to my client all the rights that a criminal defendant has and all the
11 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
12 and all the rights he is giving up by pleading guilty, and, based on the information now known to
13 me, his decision to plead guilty is knowing and voluntary.
14

15 Dated: _____

JODI LINKER
Attorney for Defendant

17 INTERPRETER CERTIFICATION

18 I, _____, hereby certify that I am a certified Spanish interpreter and
19 that I accurately translated this plea agreement to the defendant, he told me that he understood it,
20 and I believe his answer was true and correct.
21

22 Dated: _____

Interpreter's signature